IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1952

No. 117

DEENA PRODUCTS COMPANY,
Petitioner,

vs.

UNITED BRICK & CLAY WORKERS OF AMERICA, THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, and THE AMERICAN FEDERATION OF LABOR,
Respondents.

On Petition for A Writ of Certiorari to The United States Court of Appeals for the Sixth Circuit

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BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit is reported at 195 F. 2d 612. There was no opinion by the District Court for the Western District of Kentucky.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

1. Whether the Court of Appeals for the Sixth Circuit had jurisdiction to entertain the appeal because of petitioner's failure to file a timely Notice of Appeal as required by Rule 73(a), Federal Rules of Civil Procedure.

2. Whether petitioner was actually injured by alleged unlawful conduct and, even if so, whether petitioner is within the statutory right of recovery.

STATUTES AND RULES INVOLVED

Section 303(b) of the Labor-Management Relations Act, 29 U.S.C. §187(b).

Rules 73(a) and 60(b), Federal Rules of Civil Procedure, 28 U.S.C.; 28 U.S.C. §2107.

STATEMENT

Petitioner is a corporation located in Chicago, Illinois, engaged in selling lamps. Deena Artware, a subsidiary corporation of the petitioner, manufactured pottery lamp bases in Paducah, Kentucky. It was engaged in a labor dispute with the respondents on its property in Paducah. Petitioner had no contractual relationship with its subsidiary, Deena Artware, for the purchase of its products, although petitioner had made a habit in the past of purchasing all of Deena Artware's products. All dealings between the two concerns were conducted upon an arm's length basis (R. 172, et seq.). Petitioner owned none of the property involved in the labor dispute between Artware and the respondents, nor had any interest whatever in the dispute other than the relationship of buyer and seller. The respondent, United Brick and Clay Workers, on strike because of unfair labor practices by Deena Artware (see 86 NLRB 732, petition for enforcement argued before United States Court of Appeals for the Sixth Circuit, February 13, 1952, not yet decided) extended its picket line around the entire premises of its employer. Deena Artware was in the process of constructing an addition to its plant

on such premises. Construction workers engaged in this building project declined to cross the picket line, and the addition was not completed.

Deena Products, the petitioner herein, then brought suit in the District Court for the Western District of Kentucky for damages allegedly caused it by the failure to complete the building addition. The case went to trial in July of 1950, and at the close of the evidence the Court directed a verdict for respondents (R. 507), and judgment against petitioner was entered on July 14, 1950 (R. 507). Petitioner then seasonably filed a motion for a new trial (R. 508) which was overruled on December 11, 1950 (R. 509). The time for filing notice of appeal, as required under Rule 73(a), Federal Rules of Civil Procedure, having expired on January 10, 1951, petitioner thereupon, on January 22, 1951, and January 24, 1951, filed motions (R. 510-512) under Rule 60(b)(1), to set aside the order of December 11, 1950, in order to allow it to prosecute an appeal. On February 13, 1951, the District Court granted petitioner's motion, setting aside the order of December 11, 1950 (R. 510), reciting that:

> "The purpose of setting aside this order is that plaintiff's counsel has failed to give notice of an appeal and an order is now entered hereby overruling the motion of the plaintiff for a new trial, thereby enabling plaintiff to prosecute an appeal in this action."

Petitioner then filed its Notice of Appeal on February 20, 1951 (R. 518). Respondents moved to dismiss such appeal on the ground of its untimeliness, on which the Court of Appeals reserved action until after oral argument on the merits. Four days after oral argument, on February 18, 1952, the Court of Appeals granted the motion to dismiss and, in addition, ruled that petitioner was not injured by the picketing of the Artware property, there being no contractual relationship between Artware and petitioner (R. 525).

ARGUMENT

1. THE COURT OF APPEALS HAD NO JURISDICTION OVER THE APPEAL.

This Court should deny the petition for the reason that the Court of Appeals had no jurisdiction to entertain the appeal from the District Court for the Western District of Kentucky, the time for filing a Notice of Appeal in the District Court having expired. *Good Shot* v. *United States,* 179 U.S. 87.

Petitioner relies upon Rule 60(b)(1), Federal Rules of Civil Procedure. Petitioner, however, misapprehends the scope of that rule. The rule states ". . . the Court may relieve a party . . . from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect;" None of those factors was involved in the original judgment. Petitioner is not seeking relief from a final judgment but relief from his own failure to file a Notice of Appeal.

Petitioner relies upon the further provisions of Rule 60(b)(6) specifying "any other reason justifying relief from the operation of the judgment." However, no "other reason" of any nature, let alone of substance, is advanced.

Petitioner's reliance upon *Hill* v. *Hawes,* 320 U.S. 520, is misplaced, as even a cursory examination of the facts of that case demonstrates. *Hill* v. *Hawes* concerned failure of a party to learn of a judgment filed against him, not an inexcusable neglect to file a Notice of Appeal. Further cases relied on by petitioner are equally inappropriate.

2. THERE IS NO IMPORTANT QUESTION OF FEDERAL LAW INVOLVED.

Petitioner has asked this Court to grant certiorari in a case that has little or no significance to any parties other than those immediately involved.

In the trial below, the District Court, at the close of the evidence, directed a verdict for defendants-respondents. The record does not reveal the grounds on which the Trial

Court acted, nor does it contain the Court's instructions to the jury for returning such a verdict.

Therefore, it is reasonable to assume, as did the Court of Appeals in its summary disposal of the appeal, that the plaintiff-petitioner totally failed to meet the burden of proving any damage at all. This is a matter of proof on the trial level, with which this Court has no concern. Thus, it involves no statutory construction or no matter of more than incidental importance.

The Court of Appeals alternately ruled against petitioner for filing an untimely appeal. Rule 73(a) is plain and unequivocal. The Court of Appeals had all the considerations before it when it decided the matter, and its decision is clearly correct, as has been pointed out. Rule 73(a) requires no clarification by this court.

3. THE DECISIONS BELOW ARE CLEARLY CORRECT.

I

Petitioner argues that it was in fact injured by the alleged unlawful conduct of respondents directed at other parties. A cursory examination of this claim discloses that it has no substance whatever and that the District Court decision was clearly correct.

It was not the petitioner, but Deena Artware, that was constructing a new building on property owned by Deena Artware (R. 267). Deena Artware's own funds, which were borrowed from petitioner in a legitimate business transaction, were to be used for the payment to the contractors for the construction work (R. 267). According to the books and records of the two corporations involved, Deena Artware was indebted to petitioner for the cost of the construction (R. 268). To secure this loan, Deena Artware executed a promissory note with a mortgage and chattel mortgage on its realty and personalty, respectively, to petitioner (Exhibits K, L, M; R. 172 et seq.).

Although the record as a whole presents a confused

story of interlocking corporate entities, controlled largely by a single individual (R. 283, 284, 285), these corporations have been carefully maintained as separate institutions. Petitioner Deena Products carried on its business with Deena Artware at arm's length, as the securing of the loan by a promissory note and mortgages on Artware's property indicates. The two corporations were entities as separate as legal counsel could devise.

Even more important, there was no contractual agreement between the two corporations as to the future use of the building on Artware's property. The only established business relationship between the two concerns was that petitioner, in the past, had purchased the completed lamp pots from Artware and shipped them to Chicago for manufacture into a completed lamp (R. 266).

The Record (pp. 267-268) further reveals that petitioner's own president told the trial court that, if the work had been completed, the new plant would have been either conveyed to the petitioner, retained by Deena Artware, or transferred to a new separate corporation which would have been organized specifically to hold and use the property.

Thus, it is impossible to determine whether petitioner, Deena Products, was going to complete the lamps in Artware's building, or Products was going to take over Artware's building, or Artware was going to complete the lamps in Artware's building, or Artware complete the lamps in Products' building, or a new unborn Deena complete the lamps in somebody's building. From such a mixture of confusion, it is impossible to determine what, if any, existing business was damaged. When such a remote and speculative claim as this is examined, it is little wonder that the District Court directed a verdict for respondents.

II

There is yet another reason why the District Court decision is clearly correct. Petitioner does not even come

within the statutory protection of those entitled to sue, despite the broad wording of Section 303(b) of the Act, which reads: "Whoever shall be injured in his business or property . . ." Such a literal interpretation of the statutory words would permit interminable lawsuits by interminable parties, all seeking to come within the blanket provision of, "Whoever."

A literal reading of this provision would extend causes of action to every person whose financial loss, remote or speculative, came within the orbit of the union's activities. They would then be able to bring their causes before the courts and swamp the dockets with litigation. Such a result would be as absurd as it is possible under a literal reading of the statute. We respectfully submit that Congress could not have intended such an unreasonable possibility.

The answer to any question as to why the word, "whoever," was used in Section 303(b) is apparent upon viewing the scope of Section 303(a), which has four specific subsections in it. In addition to 303(a)(1), the subsection claimed to be violated here, there are subsections (2), (3) and (4). The word "whoever" was inserted in Section 303(b) to cover the contingencies of parties damaged by all four of the subsections of 303(a). It was never meant to extend beyond the protected parties of each subsection, and to give it any broader scope than that is to do violence to the intent of Congress.

The secondary boycott provisions of the statute were passed to protect innocent third party employers not involved in the primary dispute between the union and the original employer. This was enunciated in the words of Senator Taft, one of the authors of the Act, who said (93 Cong. Rec., April 29, 1947, p. 4323):

> "This provision makes it unlawful to resort to a secondary boycott to injure the business of a third person who is wholly unconcerned in the disagreement between an employer and his employees."

Other views of Senator Taft throw further light upon

the meaning of this section. When Senate Report No. 105, 80th Congress, 1st Session, was released by the Committee on Labor and Public Welfare, the co-author of the statute appended to it some of his further views which he hoped to offer as amendments on the floor. His amendment on secondary boycotts was partially successful and became Section 303 when the law was passed. Senator Taft said:

> "There appears to be virtually no disagreement as to the complete injustice of secondary boycotts and jurisdictional strikes or as to the **necessity of giving injured third parties a remedy against their operation.** For the most part it is the small employer, often with less than 50 employees, and the farmer or farm trucker who are the main victims of this type of racketeering union activity. To a small storekeeper, or machine shop, picketed out of business by unions intervening between him and his employees, or to the farmer prevented from unloading his perishable produce, the remedy of dealing with the N. L. R. B. is a weak reed." (Emphasis added.)

Thus the words, "Whoever shall be injured . . ." in Section 303(b) must be limited to the innocent third party neutral for whose protection the statute was passed. The innocent third party neutral in the instant case was the third party contractor, a firm by the name of Vandevelde and Augustus, engaged in building a new addition on the property of Deena Artware. For a secondary boycott and Section 303(a) to come into play, the union would have had to induce the employees of Vandevelde and Augustus to strike for the purpose of causing Vandevelde and Augustus to cease doing business with Deena Artware. Thus, Vandevelde and Augustus would have been the injured party, and the only party entitled to bring suit.

Thus, under this factual picture, it can be seen how remote is the relationship and how absurd is the claim of petitioner. Congress had no intention of affording causes of action to those on the far periphery of a labor dispute. To extend protection to such damage-shoppers as petitioner

would open the floodgates of litigation to every "something-for-nothing" party who might even remotely feel the effects of a union's boycott activities. Congress passed the statute for the protection of neutrals and only they should be allowed to recover their losses in an action for damages. Such a construction carries out the full statutory purpose, provides for an orderly administration of the Act, and affords adequate redress for the injured party caught in the entanglement of a labor dispute with which he has no concern.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of ceritiorari should be denied.

Respectfully submitted,

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